

On March 24, 2006 appellant, a 49-year-old postmaster, filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work. She stopped working on August 31, 2005.

Appellant submitted a detailed statement of factors, which she believed contributed to her emotional condition. They included: being ridiculed by Supervisor Reiss during a September 23, 2004 telephone conference; being yelled at by Mr. Reiss in front of staff and customers; being told Mr. Reiss wanted appellant out of the office; being told by Mr. Reiss in September 2005 that, if she could not do her job, he would find someone who could; being called a “pig” by Supervisor Grove; being accused of trying to manipulate matters in order to become a team leader; and constant micro-management of office operations. Other alleged factors included: having to work outside her work restrictions resulting from a January 7, 2002 motor vehicle accident, which appellant claimed was work related; failing to receive training required to learn new automated programs and to implement new computer programs; working in an office that was inadequately staffed; receiving an unfavorable performance review; receiving inadequate support and guidance; and being required to attend training for “dealing with troubled employees.” She also attributed her emotional condition to: being required to enter data into computers manually in order to update the WEBBATS system (Web-Based P.O. Box Management and Payment System); managing the installation of the POS (Point of Sale) system, and training postal clerks in its use; working under an increased workload, due to converting the Highway Contract Delivery (HCR) System to conform to federal “911” requirements; being required to perform “craft” work (work normally performed by clerical employees); and being required to perform custodial duties following the retirement of a custodian.

By letter dated April 3, 2006, the employing establishment controverted the claim, contending that appellant’s claim was a reaction to management’s corrective actions. Mr. Reiss denied appellant’s allegations. In a March 31, 2006 statement, he indicated that the January 2002 motor vehicle accident occurred off the job, and that appellant was accommodated with alternate work assignments which met her restrictions. Appellant was provided with continual assistance to manage the operations at the employing establishment, including staffing and schedule reviews, administrative function review and financial reviews. Mr. Reiss consistently reminded her to work within her restrictions. He noted that appellant ignored team findings and recommendations by peers, resulting in significant deficiencies in operations. Mr. Reiss denied any unprofessional conduct regarding any meetings or telephone conversations with appellant.

The record contains reports from Craig A. Soskin, a psychologist,¹ for the period August 11, 2004 through February 14, 2006. On October 14, 2005 Mr. Soskin reported appellant’s complaints that her boss had unreasonable expectations; failed to provide her with adequate support, and then criticized her for working outside her restrictions; micro-managed her; and accused her of lying. He stated that appellant was unable to function under these stressful conditions. On February 14, 2006 Mr. Soskin diagnosed “adjustment disorder/mixed anxiety and depressive mood, and psychological factors affecting medical condition.” He opined that appellant’s work position created an “emotionally overwhelming stress by a supervisor she believes gave unrealistic expectations of her to perform functions beyond her physical limitations. By not providing appellant with adequate staff and allowing needed overtime, she

¹ Mr. Soskin states that he was licensed in the state of Pennsylvania before the law required a doctoral degree for such a license, and that his master’s degree qualified him for the license at that time. He does not have a doctoral degree in psychology and is not listed in the national Register of Health Service Providers in Psychology. (www.nationalregister.org)

was put in the position of doing functions she should not have performed. She was additionally psychologically pressured because functions were not done to his satisfaction.”

Appellant submitted reports from Dr. Scott Stoll, a Board-certified physiatrist, who treated appellant for neck pain secondary to a December 2002 anterior cervical discectomy and fusion. On August 2, 2004 Dr. Stoll stated that appellant would have chronic neck pain, which might limit her physical activity. He also opined that appellant’s chronic pain had contributed to her psychological condition. On March 1, 2005 Dr. Stoll provided work restrictions, including lifting no more than five pounds, standing and walking for no more than one to four hours, and no bending, squatting, climbing or reaching overhead. On February 13, 2006 he noted that appellant’s headaches and neck pain decreased significantly after she stopped working, and opined that her stressful work environment had been causing a significant exacerbation of her pain.

Appellant submitted a November 21, 2005 report from Dr. Andre Lipton, a Board-certified osteopath, specializing in family practice, who diagnosed: “cervicalgia, headache, low back, cervical radiculopathy, migraine unspecified.” He opined that appellant was disabled from any type of regular work because she was unable to lift more than five pounds; head motion aggravated her condition; she was unable to perform more than two hours of computer work per day; and regular use of pain medication made her drowsy.

In an April 24, 2006 letter, the Office advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit evidence within 30 days. In particular, she was advised to submit a competent medical report explaining how identified factors of employment caused a diagnosed condition. The Office also asked the employing establishment to respond to appellant’s allegations.

In a letter dated May 11, 2006, Mr. Reiss again disputed appellant’s allegation. He stated that appellant was provided assistance by peer postmasters, team coordinators and various operations assessment managers, who reviewed her office and provided recommendations to assist her in prioritizing her administrative work and in developing a task analysis for each operational area. Mr. Reiss indicated that appellant did not embrace the recommendations of the peer postmasters. Appellant was given assistance in each staffing change that required administrative work, and was provided continued on-site direction. Mr. Reiss admitted that there were normal staffing changes, but stated that the employing establishment was adequately staffed, with the employee complement being appropriate for the facility. He stated that, when the custodian retired, the position was immediately filled with a contract employee. A team resource pool was available to provide support for appellant during any period of temporary interruption due to employees’ absences. Mr. Reiss noted that he reminded appellant on numerous occasions to work within her medical limitations. In support of his letter, he provided several documents, including: a November 23, 2004 report of an administrative review of the employing establishment recommending time-saving and organizational techniques, and reports of internal control financial reviews, dated December 4, 2000, October 8, 2004 and September 14, 2005, reflecting inadequate stamp stock accountability, trust fund controls, and disbursement controls. Mr. Reiss also submitted a November 24, 2004 memorandum to appellant in which he scheduled a meeting to discuss an administrative review. He also provided

memorandums dated May 9 and July 21, 2005 from Gwen Poltanis, a team coordinator, discussing the April 27, 2005 review and methods of improving office inefficiencies.

On September 1, 2005 Patrick R. Petras reported that he visited the employing establishment on August 31, 2005 to follow up on appellant's complaints that she was unable to complete necessary reports in a timely fashion. He indicated that he found appellant sitting at her desk with her head in her hands. Appellant stated, "I can't do this anymore and want out of here." Mr. Petras indicated that he told appellant to stop working and adhere to her doctor's orders.

In a June 2, 2006 letter, Mr. Reiss stated that the January 7, 2002 motor vehicle accident did not occur in the performance of duty, as it occurred off-premises when appellant was returning from lunch.

In a May 5, 2006 report, Dr. Stoll opined that, based upon increased medication usage and reports of pain, appellant's position at the employing establishment resulted in exacerbation of her neck pain. He also opined that her "stressful position was causing [a] significant portion of her depressive symptoms." On May 17, 2006 Dr. Lipton opined that stress attributed to appellant's return to work severely aggravated her symptoms of pain and depression, and he advised her not to return to work. On May 16, 2006 Mr. Soskin provided an addendum to his February 14, 2006 letter, opining that appellant was overwhelmed by the stress endured at work, due to her abusive supervisor.

In an undated statement, appellant reiterated previous allegations and identified additional factors, which she believed contributed to her emotional condition. She alleged that, when she returned to work following an assignment in October or November 2003, she was faced with a huge amount of work, because her replacement had failed to perform duties properly in her absence; she was forced to work outside her restrictions on April 20, 2003, when she was required to drive more than 30 minutes to a mandatory meeting in Lake Harmond, PA; she supervised contractors repairing a roof and electrical systems; she received numerous telephone complaints from postal customers regarding the HCR/911 program; and she was identified in local newspapers as the person responsible for the delay in changing addresses; she was poorly managed; Mr. Reiss yelled at her on February 2, 2004 and called her incompetent; and on July 14, 2004 Mr. Reiss yelled at her in front of staff and customers and called her incompetent and a liar; and that she had better get her act together.

By decision dated September 29, 2006, the Office denied appellant's claim, finding that she had failed to establish a compensable factor of employment. On October 24, 2006 appellant requested an oral hearing.

At the April 25, 2007 hearing, appellant testified that, as postmaster, she was responsible for "everything that goes on," and was on-call seven days a week. She stated that she was required to perform the duties of a custodian after he retired, as well as her other required duties, which were outlined in the "Statement of Events and Circumstances (Statement)." In her statement, appellant reiterated her previous allegations regarding her work duties and circumstances.

Appellant submitted an undated statement from Lorraine Ostrowe, a coworker, who indicated that she had worked in the employing establishment for 11 years. Ms. Ostrowe stated that appellant had returned to light duty following a January 7, 2002 automobile accident; that, due to employee shortages, appellant was overburdened with work; that many customers complained about the new "911" system, which was confusing and unorganized; that there was a conflict between appellant and Mr. Reiss. In a statement dated April 30, 2007, coworker Mary Samjera noted that appellant performed her duties diligently, even though she was faced with staffing shortages, which required her to work overtime.

On May 14, 2007 Dr. Lipton stated that he had reviewed the Statement of Events and Circumstances describing appellant's day-to-day duties from September 2003 through August 31, 2005. He opined that these duties contributed to appellant's anxiety and depression, rendering her disabled effective August 31, 2005.

The record contains a May 31, 2007 statement from Ernest J. Swaldi, postmaster of Nesquehoning Post Office from August 25, 2001 through June 11, 2005. Mr. Swaldi indicated that Mr. Reiss implemented a team concept, enabling postmasters to perform better and operate more efficiently by drawing on the expertise of their peers. He also noted the establishment of the employee resource pool, which was available to assist postmasters in emergencies. Mr. Swaldi stated that Mr. Reiss was extremely helpful and supportive.

On June 4, 2007 Mr. Reiss stated that he was always responsive to appellant's requests for assistance. He noted that a review was performed, reflecting the proper number of clerks needed to perform the functions of the Jim Thorpe station. Appellant had access to the resource pool for additional clerk resources, but she failed to utilize its services. He indicated that a delay in hiring a contract cleaner resulted from appellant's failure to timely request a maintenance review. He also stated that maintenance problems were properly addressed. In support of his statement, he submitted documents relating to a review of the Jim Thorpe location pursuant to the assignment of clerk positions and custodian.

In a June 28, 2007 decision, the Office hearing representative found that appellant had established compensable factors of employment, but had failed to submit sufficient medical evidence to establish that she sustained an emotional condition due to the established employment factors. The hearing representative identified four compensable factors of employment: entering data into automated systems (WINBATS, POS, WEBBATS, HCR/911); performing craft work (sorting, casing and delivering mail, and custodial duties); supervising contractors who repaired post office roof and electrical systems; and receiving telephone complaints from postal customers regarding the HCR/911 program.

On October 1, 2007 appellant requested reconsideration, alleging that she had established additional compensable factors of employment, including completion of tasks which had not been finished by the person filling in for her during an absence; and being the subject of a negative newspaper article. She also submitted a medical report from Dr. Harry A. Doyle, a Board-certified forensic psychiatrist, which she contended established that her emotional condition was causally related to factors of employment.

In a 14-page report dated September 28, 2007, Dr. Doyle diagnosed major depressive disorder, single episode, moderate, and pain disorder associated with psychological factors and general medical condition. He related appellant's factual, psychological and medical history and conducted a complete psychiatric evaluation. Testing included MMPI 2 (Minnesota Multiphasic Personality Inventory); BDI -- II (Beck Depression Inventory); and BA I (Beck Anxiety Inventory). Dr. Doyle described appellant's job duties, including entering data, performing craft work, supervising contractors and receiving telephone complaints from postal customers. He stated that she was experiencing increasing difficulty functioning emotionally as a result of these work circumstances and became acutely overwhelmed emotionally on August 31, 2005, when she stopped working. Dr. Doyle opined, to a reasonable degree of medical certainty, that appellant's depression was caused by her assigned and special work duties.

By decision dated December 19, 2007, the Office denied modification of the June 28, 2007 decision, finding that the medical evidence did not establish that appellant's emotional condition was causally related to established factors of employment. The Office also found that appellant had not established additional compensable factors of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.² The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of a claimant's work or her fear and anxiety regarding her ability to carry out her duties.³ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *See Peter D. Butt, Jr.*, 56 ECAB 117 (2004). *See also Ronald K. Jablanski*, 56 ECAB 616 (2005); *Barbara J. Latham*, 53 ECAB 316 (2002).

⁵ *See Charles D. Edwards*, 55 ECAB 258 (2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁷ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.⁸ Mere perceptions and feelings of harassment will not support an award of compensation.⁹

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by her employment.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS

The Board finds that this case is not in posture for decision. The Office accepted that appellant had established four compensable factors of employment: entering data into automated systems (WINBATS, POS, WEBBATS, HCR/911); performing craft work (sorting, casing and delivering mail, and custodial duties); supervising contractors who repaired post office roof and

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Charles D. Edwards*, *supra* note 5.

⁸ *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

⁹ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁰ *James E. Norris*, 52 ECAB 93 (1999).

¹¹ *See Charles D. Edwards*, *supra* note 5.

¹² *See Ronald K. Jablanski*, *supra* note 4; *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

electrical systems; and receiving telephone complaints from postal customers regarding the HCR/911 program, but found that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to the established employment factors. The Board finds, however, that appellant has submitted medical evidence which, while not well rationalized, is supportive of the claim that appellant sustained an emotional condition due to these compensable employment factors. Therefore, further development of the medical evidence is warranted.

The Board will affirm the Office's finding that appellant has not established any other compensable factors of employment. Appellant alleged that she was the victim of discrimination or harassment, claiming that Mr. Reiss ridiculed and yelled at her in front of staff and customers; wanted her out of the office; told her that, if she could not do her job, he would find someone who could; and accused her of trying to manipulate matters in order to become a team leader. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these may constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, and appellant has not submitted sufficient corroborative evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁵

Appellant alleged that Supervisor Grove called her a "pig," and that Mr. Reiss called her a liar and incompetent. The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁶ The Board notes initially that appellant did not provide any evidence, such as witness statements, to corroborate that the alleged statements were actually made. However, assuming *arguendo* that the statements were made, the Board finds that they do not constitute verbal abuse or harassment. While the statements may have engendered offensive feelings, they did not sufficiently affect the conditions of employment to constitute a compensable factor.¹⁷

Appellant alleged that Mr. Reiss constantly micromanaged office operations; failed to provide training required to learn new automated programs and to implement new computer programs; required her to attend training for "dealing with troubled employees;" failed to provide adequate support and guidance; and gave her an unfavorable performance review. She

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁶ See *Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, *supra* note 13.

¹⁷ See *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

also alleged that her office was inadequately staffed. The Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁸ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰ In this case, the employing establishment denied appellant's allegations as they relate to lack of proper training, failure to provide adequate support and guidance; and inadequate staffing, and provided evidence that substantial measures were taken to assure that appellant had adequate support from her peers, as well as a proper staff complement. Appellant has not established that her unfavorable performance review, or the requirement that she attend training for "dealing with troubled employees," was unreasonable. She has not established a compensable employment factor under the Act with respect to administrative matters, as the evidence pertaining to these allegations fail to establish error or abuse.

Appellant alleged that when she returned to work following an assignment in 2003, she was faced with a huge amount of work, because her replacement had failed to perform duties properly in her absence. She also alleged that she was forced to work outside her restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record substantiated such activity.²¹ The employing establishment controverted appellant's claim, noting that she was repeatedly advised not to work outside her restrictions. Appellant has not submitted sufficient evidence to corroborate her allegations, nor has she provided sufficient evidence to substantiate that she was subjected to unreasonable amounts of work in 2003. She alleged that she sustained an emotional reaction after being the subject of a negative newspaper article relating to problems in the implementation of the 911 program. Appellant has not alleged that her stress was due to an abusive action on the part of the employing establishment, but rather to an action by a third party -- a local newspaper. The Board finds that her reaction must be considered self-generated. Accordingly, appellant has not established a compensable factor of employment with regard to these allegations.

Appellant has alleged that her emotional condition was precipitated, in part, by the performance of her regular and specially assigned duties. The Board has held that emotional reactions to situations in which an employee is trying to meet her regularly assigned position

¹⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁹ *Id.*

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²¹ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

requirements are compensable.²² The evidence of record establishes that appellant performed the functions of: entering data into automated systems (WINBATS, POS, WEBBATS, HCR/911); performing craft work (sorting, casing and delivering mail, and custodial duties); supervising contractors who repaired post office roof and electrical systems; and receiving telephone complaints from postal customers regarding the HCR/911 program. Given that these duties were part of her job requirements, the Board finds that she has established compensable employment factors.²³

The Office found that, although appellant had established compensable factors of employment, she had failed to provide sufficient medical evidence to establish that she sustained an emotional condition due to the established employment factors. The Board finds that this case is not in posture for a decision as to the issue of causal relationship.

Appellant has submitted evidence supporting that her diagnosed emotional disorder is causally related to the accepted compensable employment factors.²⁴ In a 14-page report dated September 28, 2007, Dr. Doyle diagnosed major depressive disorder, single episode, moderate, and pain disorder associated with psychological factors and general medical condition. He described appellant's job duties, including entering data, performing craft work, supervising contractors and receiving telephone complaints from postal customers. Based upon a full review of appellant's factual and medical history, test results, and a complete psychiatric evaluation, Dr. Doyle opined, to a reasonable degree of medical certainty, that appellant's depression was caused by her assigned and special work duties. Dr. Stoll opined that, based upon increased medication usage and reports of pain, appellant's "stressful position was causing [a] significant portion of her depressive symptoms." Dr. Lipton opined that appellant's day-to-day duties contributed to her anxiety and depression.

Although the medical evidence is not sufficiently detailed to meet appellant's burden of proof, appellant has submitted sufficient evidence to require further development of the evidence.²⁵ Proceedings under the Act are not adversarial in nature; nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.²⁶ Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

²² See *Tina D. Francis*, 56 ECAB 180 (2004). See also *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

²³ *Lillian Cutler*, *supra* note 3.

²⁴ See *William P. George*, 43 ECAB 1159, 1168 (1992).

²⁵ See *Felix Flecha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

²⁶ *Claudio Vazquez*, *supra* note 6; *William J. Cantrell*, 34 ECAB 1223 (1983).

On remand, the Office should prepare a statement of accepted facts that properly distinguishes between compensable and noncompensable work factors. It should then obtain a reasoned medical opinion as to whether appellant has sustained an emotional condition causally related to the compensable work factor. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and June 28, 2007 decisions of the Office of Workers' Compensation Programs are affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 2, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board